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SECRET MOVE KEEPS BIN LADEN RECORDS OUT OF SIGHT

BY RICHARD LARDNER
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WASHINGTON (AP) -- The nation's top special operations commander ordered military files about the Navy SEAL raid on Osama bin Laden's hideout to be purged from Defense Department computers and sent to the CIA, where they could be more easily shielded from ever being made public.

The secret move, described briefly in a draft report by the Pentagon's inspector general, set off no alarms within the Obama administration even though it appears to have sidestepped federal rules and perhaps also the Freedom of Information Act.

An acknowledgement by Adm. William McRaven of his actions was quietly removed from the final version of an inspector general's report published weeks



AP Photo/J. Scott Applewhite

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ago. A spokesman for the admiral declined to comment. The CIA, noting that the bin Laden mission was overseen by then-CIA Director Leon Panetta before he became defense secretary, said that the SEALs were effectively assigned to work temporarily for the CIA, which has presidential authority to conduct covert operations.

"Documents related to the raid were handled in a manner consistent with the fact that the operation was conducted under the direction of the CIA director," agency spokesman Preston Golson said in an emailed statement.

"Records of a CIA operation such as the (bin Laden) raid, which were created during the conduct of the operation by persons acting under the authority of the CIA Director, are CIA records."

Golson said it is "absolutely false" that records were moved to the CIA to avoid the legal requirements of the Freedom of Information Act.

The records transfer was part of an effort by McRaven to protect the names of the personnel involved in the raid, according to the inspector general's draft report.

But secretly moving the records allowed the Pentagon to tell The Associated Press that it couldn't find any documents inside the Defense Department that AP had requested more than two years ago, and could represent a new strategy for the U.S. government to shield even its most sensitive activities from public scrutiny.

"Welcome to the shell game in place of open government," said Thomas Blanton, director of the National Security Archive, a private research institute at George Washington University. "Guess which shell the records are under. If you guess the

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right shell, we might show them to you. It's ridiculous."

McRaven's directive sent the only copies of the military's records about its daring raid to the CIA, which has special authority to prevent the release of "operational files" in ways that can't effectively be challenged in federal court. The Defense Department can prevent the release of its own military files, too, citing risks to national security. But that can be contested in court, and a judge can compel the Pentagon to turn over non-sensitive portions of records.



Under federal rules, transferring government records from one executive agency to another must be approved in writing by the National Archives and Records Administration. There are limited circumstances when prior approval is not required, such as when the records are moved between two components of the same executive department. The CIA and Special Operations Command are not part of the same department.

The Archives was not aware of any request from the U.S. Special Operations Command to transfer its records to the CIA, spokeswoman Miriam Kleiman said. She said it was the Archives' understanding that the military records belonged to the CIA, so transferring them wouldn't have required permission under U.S. rules.

Special Operations Command also is required to comply with rules established by the chairman of the Joint Chiefs of Staff that dictate how long records must be retained. Its July 2012 manual requires that records about military operations and planning are to be considered permanent and after 25 years, following a declassification review, transferred to the Archives.

Also, the Federal Records Act would not permit agencies "to purge records just on a whim," said Dan Metcalfe, who oversaw the U.S. government's compliance with the Freedom of Information Act as former director of the Justice Department's Office of Information and Privacy. "I don't think there's an exception allowing an agency to say, 'Well, we didn't destroy it. We just deleted it here after transmitting it over there.' High-level officials ought to know better."

It was not immediately clear exactly which Defense Department records were purged and transferred, when it happened or under what authority, if any, they were sent to the CIA. No government agencies the AP contacted would discuss details of the transfer. The timing may be significant: The Freedom of Information Act generally applies to records under an agency's control when a request for them is received. The AP asked for files about the mission in more than 20 separate requests, mostly submitted in May 2011 - several were sent a day after President Barack Obama announced that the world's most wanted terrorist had been killed in a firefight. Obama has pledged to make his administration the most transparent in

U.S. history.

The AP asked the Defense Department and CIA separately for files that included copies of the death certificate and autopsy report for bin Laden as well as the results of tests to identify the body. While the Pentagon said it could not locate the files, the CIA, with its special power to prevent the release of records, has never responded. The CIA also has not responded to a separate request for other records, including documents identifying and describing the forces and supplies required to execute the assault on bin Laden's compound.

The CIA did tell the AP it could not locate any emails from or to Panetta and two other top agency officials discussing the bin Laden mission.

McRaven's unusual order would have remained secret had it not been mentioned in a single sentence on the final page in the inspector general's draft report that examined whether the Obama administration gave special access to Hollywood executives planning a film, "Zero Dark Thirty," about the raid. The draft report was obtained and posted online last month by the Project on Government Oversight, a nonprofit watchdog group in Washington.

McRaven, who oversaw the bin Laden raid, expressed concerns in the report about possible disclosure of the identities of the SEALs. The Pentagon "provided the operators and their families an inordinate level of security," the report said. McRaven also directed that the names and photographs associated with the raid not be released.

"This effort included purging the combatant command's systems of all records related to the operation and providing these records to another government agency," according to the draft report. The sentence was dropped from the report's final version.

Since the raid, one of the SEALs published a book about the raid under a pseudonym but was subsequently identified by his actual name. And earlier this year the SEAL credited with shooting bin Laden granted a tell-all, anonymous interview with Esquire about the raid and the challenges of his retiring from the military after 16 years without a pension.

Current and former Defense Department officials knowledgeable about McRaven's directive and the inspector general's report told AP the description of the order in the draft report was accurate. The reference to "another government agency" was code for the CIA, they said. These individuals spoke on the condition of anonymity because they were not authorized to discuss the matter by name.

There is no indication the inspector general's office or anyone else in the U.S. government is investigating the legality of transferring the military records. Bridget Serchak, a spokeswoman for the inspector general, would not explain why the

reference was left out of the final report and what, if any, actions the office might be taking.

"Our general statement is that any draft is pre-decisional and that drafts go through many reviews before the final version, including editing or changing language," Serchak wrote in an email.

The unexplained decision to remove the reference to the purge and transfer of the records "smells of bad faith," said Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists. "How should one understand that? That adds insult to injury. It essentially covers up the action."

McRaven oversaw the raid while serving as commander of the Joint Special Operations Command, the secretive outfit in charge of SEAL Team Six and the military's other specialized counterterrorism units. McRaven was nominated by Obama to lead Special Operations Command, JSOC's parent organization, a month before the raid on bin Laden's compound. He replaced Adm. Eric Olson as the command's top officer in August 2011.

Ken McGraw, a spokesman for Special Operations Command, referred questions to the inspector general's office.

The refusal to make available authoritative or contemporaneous records about the bin Laden mission means that the only official accounts of the mission come from U.S. officials who have described details of the raid in speeches, interviews and television appearances. In the days after bin Laden's death, the White House provided conflicting versions of events, falsely saying bin Laden was armed and even firing at the SEALs, misidentifying which of bin Laden's sons was killed and incorrectly saying bin Laden's wife died in the shootout. Obama's press secretary attributed the errors to the "fog of combat."

A U.S. judge and a federal appeals court previously sided with the CIA in a lawsuit over publishing more than 50 "post-mortem" photos and video recordings of bin Laden's corpse. In the case, brought by Judicial Watch, a conservative watchdog group, the CIA did not say the images were operational files to keep them secret. It argued successfully that the photos and videos must be withheld from the public to avoid inciting violence against Americans overseas and compromising secret systems and techniques used by the CIA and the military.

The Defense Department told the AP in March 2012 it could not locate any photographs or video taken during the raid or showing bin Laden's body. It also said it could not find any images of bin Laden's body on the USS Carl Vinson, the aircraft carrier from which he was buried at sea. The Pentagon also said it could not find any death certificate, autopsy report or results of DNA identification tests for bin Laden, or any pre-raid materials discussing how the government planned to dispose of bin Laden's body if he were killed. It said it searched files at the

Pentagon, Special Operations Command headquarters in Tampa, Fla., and the Navy command in San Diego that controls the Carl Vinson.

The Pentagon also refused to confirm or deny the existence of helicopter maintenance logs and reports about the performance of military gear used in the raid. One of the stealth helicopters that carried the SEALs in Pakistan crashed during the mission and its wreckage was left behind.

The Defense Department also told the AP in February 2012 that it could not find any emails about the bin Laden mission or his "Geronimo" code name that were sent or received in the year before the raid by McRaven. The department did not say they had been moved to the CIA. It also said it could not find any emails from other senior officers who would have been involved in the mission's planning. It found only three such emails written by or sent to then-Defense Secretary Robert Gates, and these consisted of 12 pages sent to Gates summarizing news reports after the raid.

The Defense Department in November 2012 released copies of 10 emails totaling 31 pages found in the Carl Vinson's computer systems. The messages were heavily censored and described how bin Laden's body was prepared for burial.

These records were not among those purged and then moved to the CIA. Pentagon spokesman Lt. Col. James Gregory said the messages from the Carl Vinson "were not relating to the mission itself and were the property of the Navy."

AP Intelligence Writer Kimberly Dozier contributed to this report.

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